

REMARKS

Reconsideration and withdrawal of the Claim objections and Claim rejections are requested in view of the foregoing Claim amendments and the following discussion.

Claims 5-14 are objected to as being in improper multiple dependent claim form. In response, Applicant has amended the claims to remove improper multiple claim dependencies.

Claim 1 is rejected under 35 USC 102(b) as being anticipated by Xiaolie. Claims 2-4 are rejected under 35 USC 103 as being unpatentable over Xiaolie in view of Russell. In response to the foregoing rejections, Applicant has amended Claim 1 to incorporate some of the limitations of Claim 2, and to otherwise distinguish the claim over the prior art of record.

In particular, Applicant has amended Claim 1 to specify that the attachment means is for retaining the visor of the apparatus in front of the visor of the headgear, and to specify that the seal is for sealing the apparatus with the headgear. Support for the amendment specifying that the visor apparatus is in front of the visor of the headgear may be found, for example, at page 4, paragraph 2, and page 9, paragraph 2. Further, since the visor of the headgear is part of the headgear, there exists support for a seal for sealing the apparatus with the headgear as set forth in amended Claim 1.

In the Action, the Examiner acknowledges that Xiaolie does not disclose a seal as called for in Claim 2, and relies upon Russell to provide such seal. However, the seal in Russell is for providing a seal between body portions surrounding the eyes of the wearer, and the claimed eye shield. This is distinguishable in that the claims of the present invention are directed to a seal sealing the claimed apparatus with protective headgear. In this manner, the claim limitation enable the invention to provide a seal between a visor having a wiper blade and protective headgear which comes in different shapes and sizes such that the seal allows the apparatus to be

used with many helmets to prevent rain and dirt from entering the gap between the visor of the apparatus, and the visor of the helmet which would otherwise obscure the user's vision, or distract the user's attention. By way of contrast, since the seal in Russell is for providing a seal between an eye shield and the face of the wearer, combining the seal of Russell with Xiaolie would result in a device with a visor wiper which provides a seal to the skin of the wearer around the eyes. Since neither Xiaolie nor Russell discloses an apparatus intended to be worn over a protective helmet, a person skilled in the art would not be led to combine the two references which do not relate in any way to a protective headgear apparatus.

According to MPEP §2142

[t]he key to supporting any rejection under 35 U.S.C. 103 is the clear articulation of the reason(s) why the claimed invention would have been obvious. The Supreme Court in *KSR International Co. v. Teleflex Inc.*, 550 U.S. ___, ___, 82 USPQ2d 1385, 1396 (2007) noted that the analysis supporting a rejection under 35 U.S.C. 103 should be made explicit. The Federal Circuit has stated that 'rejections on obviousness cannot be sustained with mere conclusory statements; instead there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.' *In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006). See also *KSR*, 550 U.S. at ___, 82 USPQ2d at 1396 (quoting Federal Circuit statement with approval).

Further, according to MPEP §2143, "[T]he Supreme Court in *KSR International Co. v. Teleflex, Inc.* 550 U.S. ___, ___, 82 USPQ2d 1395-1397 (2007) identified a number of rationales to support a conclusion of obviousness which are consistent with the proper "functional approach" to the determination of obviousness as laid down in *Graham*." Further, according to MPEP §2143.01, [o]bviousness can be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so. *In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1335 (Fed. Cir. 2006). Further, "[t]he

mere fact that references can be combined or modified does not render the resultant combination obvious unless the results would have been predictable to one of ordinary skill in the art.” *KSR International Co. v. Teleflex, Inc.* 550 U.S. ___, ___, 82 USPQ2d 1385, 1396 (2007), and *Examination Guidelines for Determining Obviousness Under 35 U.S.C. 103*, Section III(D), issued by the U.S. Patent and Trademark Office on October 10, 2007. MPEP §2142 further provides:

[a] statement that modification of the prior art to meet the claimed invention would have been “well within the ordinary skill of the art at the time the claimed invention was made” because the references relied upon teach that all aspects of the claimed invention were individually known in the art is not sufficient to establish *prima facie* case of obviousness without some objective reason to combine the teachings of the references. *Ex parte Levengood*, 28 USPQ2d 1300 (Pat. App. & Inter. 1993).

In this connection, Applicant submits that there is no objective reason to combine the teachings of the references.

Accordingly, Applicant submits that Claim 1, as amended, is patentably distinguishable over the prior art of record. Further, since the remaining claims depend from Claim 1, and add further limitations thereto, Applicant submits that the claims pending for examination, namely Claims 1-13 are now in condition for allowance, which early Action is requested.

If necessary, the Commissioner is hereby authorized in this, concurrent and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2666 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17, particularly extension of time fees.

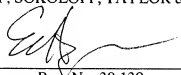
PETITION FOR EXTENSION OF TIME

Per 37 C.F.R. 1.136(a) and in connection with the Office Action mailed on February 12, 2008, Applicant respectfully petitions Commissioner for a one (1) month extension of time, extending the period for response to June 12, 2008. The Commissioner is hereby authorized in this, concurrent and future replies, to charge payment or credit any overpayment to Deposit Account No. 02-2666.

Respectfully submitted,

BLAKELY, SOKOLOFF, TAYLOR & ZAFMAN

Dated: 6/12/08


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CERTIFICATE OF ELECTRONIC FILING

I hereby certify that this correspondence is being submitted electronically via EFS Web on the date shown below


Linda Metz

June 12, 2008

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